

**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

**IN RE: PETITION OF SETH’S WAY, LLC : DOCKET NO. 5100**

**ORDER**

On December 14, 2020, Seth’s Way, LLC (Petitioner), a solar project that was issued a Certificate of Eligibility to enroll in the 2017 Renewable Energy Growth (REGrowth) Program, filed a petition with the Public Utilities Commission (Commission) under Section 10 of The Narragansett Electric Company Renewable Energy Growth Program for Non-Residential Customers Tariff, RIPUC No. 2152-C (tariff).<sup>1</sup> Petitioner requested the Commission allow the Narragansett Electric Company d/b/a National Grid (National Grid) to permit a third extension on the deadline for Petitioner to achieve operation of its solar project at expected availability and capacity claiming that the extension is necessary because of development and construction delays caused by COVID-19.<sup>2</sup>

Petitioner indicated that the project had received a Certificate of Eligibility on January 3, 2018. This was the third enrollment of the 2017 REGrowth Program Year. Per the REGrowth law and tariff, the deadline for the project to achieve 90% of its expected output (output deadline) was January 3, 2020. The tariff allows for Petitioner to request two six-month extensions which were sought and granted by Petitioner and/or its predecessor. The new output deadline is January 3, 2021. There is no dispute that only two six-month extensions are allowed under the tariff. National Grid has declined to provide any extensions beyond those that are contained in the tariff.

---

<sup>1</sup> Pet. (Dec. 14, 2020); <http://www.ripuc.ri.gov/eventsactions/docket/5100page.html>.

<sup>2</sup> Section 10 states, “Dispute Resolution If any dispute arises between the Company and either the Applicant or the Customer, the dispute shall be brought before the Commission for resolution. Such disputes may include but are not limited to those concerning the Rules, terms, conditions, rights, responsibilities, the termination of the Tariff or Tariff supplement, or the performance of the Applicant, the Customer, or the Company.”

Petitioner's project was acquired by Navisun from a prior owner on April 9, 2020, following the first six-month extension. Petitioner represented that on March 18, 2019, under the prior ownership of the project, the West Greenwich Planning Board approved Seth's Way Development Review Permit Application provided: 1) the Town Planner's comments were met; 2) Final Approval is done "administratively;" 3) Seth's Way provided a decommissioning bond; and 4) Seth's Way provided a buffer planting bond.

Petitioner stated that following acquisition, it immediately began work on meeting the conditions of the 2019 approval. It asserted that there were delays as a result of shutdowns ordered by Governor Raimondo in Spring 2020. Petitioner represented that in June 2020, Navisun, made initial contact with the Town of West Greenwich to begin fulfilling the conditions.<sup>3</sup> According to the Petition, Navisun made its first filing with the Town on July 10, 2020. Petitioner provided a timeline of subsequent events as part of its Petition. The Town process appears to have been completed by the middle of September 2020.<sup>4</sup> The Petition noted that the only item remaining was Petitioner providing a decommissioning bond to the Town. Petitioner secured the bond on October 26, 2020. Petitioner stated it has not received a building permit but did not indicate whether it has filed evidence of the final surety bond with the Town.

As a basis for COVID related delays, Petitioner indicated that in June 2020, it was advised that the racking system for the solar panels would take between 20-24 weeks to arrive and represented this is a result of COVID-19 supply chain delays. At that time, Petitioner chose not to order the racking system. It appears from the Petition that Navisun still has not ordered the racking system. Petitioner stated, nonetheless, that if it is granted a seven-month extension, it will

---

<sup>3</sup> Petitioner does not state that it had made any attempts to interact with the Town of West Greenwich prior to June.

<sup>4</sup> On September 17, 2020, the West Greenwich Planning Board approved all conditions on the Project's Development Plan Review. (Pet. at 3.).

commence construction immediately. Petitioner explained that if it were to commence construction without an approved extension of time, it would be prohibited from re-enrolling the project in a future REGrowth Program Year.

Petitioner stated that on November 10, 2020, it resolved that it would need to file a petition with the Commission to seek an extension. A decision is needed before January 3, 2021. Given that the Petition was filed five weeks later, leaving eleven business days for a decision, the Commission reviewed the Petition and put it on the agenda for decision at its next Open Meeting.<sup>5</sup> On December 22, 2020, the Commission reviewed the Petition and denied an additional extension. Section 10 of the tariff allows disputes between an applicant and National Grid to be brought to the Commission. However, in this case, there was no real dispute presented for review. Petitioner recognized that it is only entitled to two six-month extensions under the tariff and indicated that National Grid approved the two extensions. The fact that National Grid denied an extension not provided for in the tariff does not create a dispute over the proper application of the tariff.<sup>6</sup>

However, even reviewing the Petition as if this was a generic petition for relief under the Commission's procedural rules, and looking at the totality of the circumstances over the almost thirty-six months during which the project was enrolled in the REGrowth program, the Commission found that the facts showed that while COVID-19 may have played a contributing factor during the past six to eight months, it was not the primary cause of the inability to meet the extended output deadline over the full 36-month period. Petitioner did not explain the apparent inactivity on the project from March 2019 through June 2020. Such a delay from March 2019

---

<sup>5</sup> On December 21, 2020, National Grid filed a Motion to Intervene which was ultimately not ruled on by the Commission due to the fact that a decision was being made the next day.

<sup>6</sup> Petitioner sought the third extension from National Grid starting in September 2020 and argued that because National Grid did not provide a final response until November 2020, it was harmed by circumstances outside of its control. Petitioner was well aware of the constraints of the tariff in September and could have filed a Petition for relief prior to December 14, 2020.

through at least March 2020 cannot be attributed to COVID-19. Furthermore, Navisun acquired the project on April 9, 2020 knowing that it had already received one of the two allowed extensions and that there was a tight timeframe to finalize the project during a pandemic. Finally, the Town's response times between June and September to each of the items provided by Petitioner did not seem unreasonable.

To support its request, the Petitioner cites to the Commission's decision in Docket 5029, in which an extension had been granted to a different project that had already commenced construction when the pandemic hit. The Commission noted that facts of the instant Petition differ significantly from the facts of the petition filed with the Commission in Docket 5029 during the Spring of 2020. In Docket No. 5029, the Commission considered a request for relief filed by a medium solar project under the 2018 REGrowth Program Year. That project had commenced construction in November 2019 and based on the facts presented, the project should have been able to achieve its June 2020 output deadline absent COVID-19 related delivery and contractor delays in April and May, when the most severe economic restrictions were in place. Small and medium sized projects have no ability to request extensions of time under the tariff and in that case, had the project been denied the extension, it would not have been able to re-enroll in a future REGrowth program year. Finally, given such potential harm to a limited number of projects in the small and medium project classes, the Commission approved the proposal made by Narragansett, the Office of Energy Resources, and the Division to allow a limited one-time extension of 120 days for the small and medium projects enrolled in the 2018 REGrowth Program to meet their respective output deadlines.

Unlike the projects subject to the Commission's Order in Docket No. 5029, in this case, Petitioner will not suffer any irreparable harm from this decision. Petitioner stated that projects that commence construction are ineligible for the REGrowth program. According to Petitioner,

therefore, Navisun could not have proceeded on the project and also preserved its right to apply for a certificate of eligibility in future REG program years (if necessary). By not ordering the racking system and not commencing construction, Navisun appears to have been preserving, or at least contemplating, an alternative route toward completion of the project that could be achieved by enrolling in the REGrowth program in 2021. This avenue was not open to the projects in Docket No. 5029.

Accordingly, it is hereby

(23966) ORDERED:

The Petition brought by Seth's Way, LLC for an exception to Tariff RIPUC No. 2152-C is denied.

EFFECTIVE AT WARWICK, RHODE ISLAND ON DECEMBER 22, 2020 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED JANUARY 6, 2021.

PUBLIC UTILITIES COMMISSION



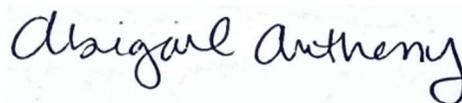
---

Ronald T. Gerwatowski, Chairperson



---

Marion S. Gold, Commissioner



---

Abigail Anthony, Commissioner

**Notice of Right of Appeal:** Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within 7 days from the date of the Order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or Order.